

# **EXHIBIT D**

**NO. DC-21-00333**

**CHEMTOV MORTGAGE GROUP:  
CMG 777 ESCROW3 LLC;  
CMG777 ESCROW 4 LLC;  
CMG 777 ESCROWS LLC; AND  
CMG DHC ESCROW 7 LLC,**

**Petitioners,**

**V.**

**WRIGHT BROTHERS AIRCRAFT  
TITLE, INC.,**

**Respondent.**

**V.**

**CCUR HOLDINGS, INC.;  
CCURAVIATION FINANCE, LLC;  
EHC ASPEN PROPERTIES, LLC; and  
EDIDIN PARTNERS, LLC**

**Intervenors.**

**IN THE DISTRICT COURT**

**DALLAS COUNTY, TEXAS**

## 191ST JUDICIAL DISTRICT

**VERIFIED PETITION IN INTERVENTION TO RULE 202 PETITION TO  
INVESTIGATE SUIT AND REQUEST FOR EXPEDITED CONSIDERATION**

Intervening Petitioner Moncler Motors LLC ("Moncler Motors") files this its Verified Petition in Intervention in the Rule 202 Petition of Petitioners Chemtov Mortgage Group, CMG 777 Escrow3 LLC, CMG 777 Escrow4 LLC, CMG 777 Escrows LLC, and CMG 777 DHC Escrow7 LLC (collectively, the "Chemtov Petitioners") and Intervenors CCUR Holdings, Inc., CCUR Aviation Finance, LLC, EHC Aspen Properties, LLC, and Edidin Partners, LLC (collectively, the "CCUR Intervenors"), for the Rule 202 discovery of respondent Wright Brothers Aircraft Title, Inc. ("Wright Brothers"), Debbie Mercer-Erwin and Kayleigh Moffett, employees and related parties to Wright Brothers, and Bank of America, a third party presently known to have

relevant and pertinent information, and in support thereof, Moncler Motors would respectfully show the Court the following:

### **PARTIES**

1. Intervenor Moncler Motors, LLC (“Moncler”) is a privately-owned limited liability company, formed under the laws of the State of Florida and located in the State of Florida, that provides temporary financing in the form of fully refundable escrow deposits for aircraft purchase related transactions through its wholly-owned subsidiaries. Specifically, Moncler provided escrow funds in the approximate amount of Thirty-Seven Million Five-Hundred Thousand Dollars (\$37,500,000) to Wright Brothers for aircraft financing transactions, pursuant to written contracts covering such funds.

2. Respondent Wright Brothers is an Oklahoma company purporting to specialize in aircraft purchase related financial transaction, and together with its affiliates, does business throughout the world with bases of operation in Texas and Oklahoma.

3. Debbie Mercer-Erwin is a principal of Respondent Wright Brothers and is believed to have knowledge of relevant information.

4. Kayleigh Moffett is an employee of Respondent Wright Brothers and is believed to have knowledge of relevant information.

5. Bank of America is a federally insured banking institution with offices throughout the United States, including Texas, and internationally. The escrowed funds described herein were initially deposited by Moncler Motors into an account maintained at Bank of America, ending in number 9094, and held in the name of Wright Brothers.

### **DISCOVERY PLAN**

6. Moncler Motors intends to conduct discovery pursuant to Rule 202 consistent with the discovery limitations propounded under level 2 of TEX. R. CIV. P. 190.3. Specifically, Moncler Motors intends to take the oral depositions or depositions by written questions with duces tecum of the following deponents:

- a. Wright Brothers Aircraft Title, Inc. 928 SW 107th St., Oklahoma City, OK 73170, (405) 680-9289;
- b. Debbie Mercer-Erwin, principal of Wright Brothers Aircraft Title, Inc., 928 SW 107th St., Oklahoma City, OK 73170, (405) 680-9289;
- c. Kayleigh Moffett, an employee of Wright Brothers Aircraft Title, Inc., who is believed to have knowledge of the deposit of the subject funds, 928 SW 107th St., Oklahoma City, OK 73170, (405) 680-9289;
- d. An officer of the branch of Bank of America, located at 901 Main Street, lower Level, Dallas, Texas 75201, (214) 209-1370.

7. All oral depositions and depositions by written questions will seek testimony and documents about: (i) the transactional history of, and current status and location of the funds initially deposited by Moncler Motors into, an account maintained at Bank of America ending in 9094 and held by Wright Brothers (the "9094 Account"); (ii) the identity of each authorized signatory on the 9094 Account; (iii) the transactional history of, and current status and location of the funds that may have been transferred by Wright Brothers or others from the 9094 Account; and, (iv) the ownership, signatories, and transaction history and current status of any additional accounts maintained at Bank of America held by Wright Brothers or any of its officers, directors,

employees, affiliates, subsidiaries, or other persons acting under its authority or control and into which funds from the 9094 Account have been transferred on or after February 7, 2020.

### **JURISDICTION AND VENUE**

8. Jurisdiction is proper given that Wright Brothers engages in commerce in Texas and has systematic contacts with the State of Texas. Moreover, Ms. Moffett and Ms. Mercer-Wright have been indicted in the State of Texas for activities connected with Wright Brothers and the manner and kind of escrow agreements at issue in this Rule 202 Petition. This Court also has personal jurisdiction over Bank of America because Bank of America has offices and locations in Texas, engages in commerce in Texas, has systematic contacts with the State of Texas, and because Bank of America employs employees in Texas.

9. Venue is proper in Dallas County because one or more of the witnesses reside and work in Dallas County. Furthermore, Bank of America maintains employees and conducts business in Dallas County. The amount in controversy exceeds the minimum jurisdictional limits of this Court.

### **FACTUAL BACKGROUND**

10. Moncler Motors is similarly situated with the Chemtov Petitioners and the CCUR Intervors and join in and incorporate the facts asserted in the Chemtov Petitioners Rule 202 Petition, the CCUR Intervenors' Petition in Intervention, and further state as follows.

11. This Rule 202 Petition arises out of a series of deposits Moncler Motors made into the escrow account maintained at Bank of America ending in 9094 and held in the name of Wright Brothers in connection with certain aircraft purchase transactions. Moncler Motors now seeks information regarding the locations and status of the funds which were initially deposited with

Wright Brothers at Bank of America (and any subsequent transfers of the escrowed funds) in order to investigate potential claims Moncler Motors may have against Wright Brothers or other parties.

12. From at least February 7, 2020, and continuing through at least December 14, 2020, Moncler Motors deposited in the aggregate \$37,500,000.00 with Wright Brothers related to the sale or financing of eight aircraft, as part of six transactions. All of Moncler Motor's funds were deposited with Wright Brothers pursuant to written escrow agreements that, among other things, required Wright Brothers to maintain the deposited funds in an escrow account, and to remit the funds back to Moncler Motors on demand. As recently as December 17, 2020, Ms. Mercer-Erwin acknowledged that Wright Brothers was holding \$37,500,000 in funds belonging to Moncler in escrow.

13. On or about December 2020, Moncler Motors became aware that the Wright Brothers account into which Moncler Motors had deposited funds may have been seized by the United States federal government in the course of an investigation into Wright Brothers and its owner, Debbie Mercer-Erwin.

14. Moncler Motors expected the total amount of money seized from the escrow account by the United States federal government to meet or exceed the \$37,500,000 that Moncler Motors had on deposit. On information and belief, significantly less than \$37,500,000 was found to be present in the Bank of America account seized by the United States federal government, leading Moncler Motors to reasonably conclude that Wright Brothers had transferred and converted Moncler Motor's funds to its own uses by removing the funds from the escrow account prior to the seizure of the account. Such a transfer of the funds was prohibited by the respective escrow agreements.

15. Moncler Motors has repeatedly tried contacting Wright Brothers by calling and emailing the individual executives and the corporate offices. Moncler Motors made demands upon Wright Brothers for the return of their respective funds on deposit in the escrow account. Notwithstanding the demands and the repeated inquiries, and notwithstanding the contractual provisions in the escrow agreements, Wright Brothers has neither returned the funds on deposit in the escrow account to Moncler Motors, nor has it provided Moncler Motors with any information regarding the status of Moncler Motors' deposited funds.

16. Moncler Motors files this Petition in Intervention in this Rule 202 Proceeding in order to determine if the deposited funds can be properly accounted for, or if Moncler Motors may have a cause of action against Wright Brothers (or others) for failure to return the funds as required by the terms and conditions of the respective escrow agreements between Wright Brothers and Moncler Motors.

17. Upon information and belief, some documents and information have been previously produced to the Chemtov Petitioners and the CCUR Intervenors. In the interest of efficiency, Moncler requests that it be provided a copy of all previously produced documents and information in this Rule 202 Petition.

### **ARGUMENT AND AUTHORITIES**

18. Texas Rule of Civil Procedure 202 allows parties to take depositions, including depositions by written questions before a lawsuit is filed in order to investigate a potential claim or suit. TEX. R. CIV. P. 202(a); *In re Emergency Consultants, Inc.*, 292 S.W.3d 78, 79 (Tex. App.-Houston 114th Dist.] 2007, orig. proceeding) (per curiam). In this case, Moncler Motors is attempting to establish when the funds deposited with Wright Brothers were transferred from the escrow account, where the funds have been maintained and are currently being maintained, and/or

whether Wright Brothers or any other responsible parties have transferred the deposited funds into one or more other accounts in violation of the terms of the escrow agreements. The depositions are necessary to determine if there are viable claims and recognized damages against Wright Brothers (or other third parties).

19. Moncler Motors' property interests in these sums of money are significant. Given the narrow scope of the deposition topics, the burden upon Wright Brothers, the individuals, and Bank of America to answer questions and produce requested documents is minimal. This is because Moncler Motors seeks the depositions to determine, in good faith, whether it should pursue claims against Wright Brothers (or other third parties) in relation to its handling of the escrow funds (and the conversion of same).

20. The benefit of the discovery sought clearly outweighs its burden because it appears that Wright Brothers has blatantly disregarded its duty to properly safeguard Moncler Motors' funds, and that the transfer and movement of these funds can be discovered by the production of bank documents that are routinely created and prepared by the bank in the normal course of business. Given Wright Brothers' unwillingness to respond to the demand for return of the funds and the futile efforts to communicate with them, Moncler Motors should be permitted to investigate these issues forthwith.

21. Moreover, Moncler Motors believes that some of the discovery that it seeks has already been produced in the instant Rule 202 Proceeding. Moncler Motors agrees to be bound by any protection or confidentiality orders currently entered in this Proceeding. The burden of producing an additional copy of already-produced discovery to Moncler is negligible.

22. The proposed deponents are persons or entities that have first-hand knowledge of the information sought. At this time, Moncler Motors do not know if a claim should be ultimately

pursued. Permitting the requested discovery will enable Moncler Motors to evaluate potential claims or a suit, as well as any defensive issues.

23. Discovery was granted in the Chemtov Petitioners' and CCUR Intervenors' Rule 202 Petition on February 5, 2021. Because Moncler Motors is similarly situated with the Chemtov Petitioners and CCUR Intervenors and seeks similar, if not identical, relief from the same parties, all of whom had notice of the prior hearing and of the scope of discovery sought, Moncler Motors request that this Court hear this Intervention on an expedited and emergency basis. This request is not made to, and will not, burden or prejudice any party, but is made in the interests of justice, necessity, and economic efficiency so that the deponents may be deposed or respond to written questions once each, rather than through piecemeal Rule 202 Petitions.

### **PRAYER**

Accordingly, Moncler Motors respectfully requests the following relief:

- A. That the Court set this Petition for Intervention for a hearing on its earliest available docket that is not less than 15 days from the date the Court gives notice of the setting;
- B. That the Court issue an Order authorizing an expedited hearing on this Petition for Intervention and the discovery requested herein;
- C. That the Court issue an Order authorizing Moncler Motors to take the oral depositions and/or depositions upon written questions with duces tecum of the aforementioned individuals or entities in accordance with the Texas Rules of Civil Procedure, or, alternatively, to receive copies of any such discovery already conducted, and;
- D. Grant all other and further relief, both at law and in equity, to which Moncler Motors may be justly entitled.

Dated: March 9, 2021

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Cari B. LaSala", is written over a horizontal line.

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**MEADOWS, COLLIER, REED, COUSINS**

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**ATTORNEYS FOR INTERVENORS**

**VERIFICATION**

**STATE OF FLORIDA**

§

§

**COUNTY OF** Miami-Dade

§

My name is Jonatan Sredni, my date of birth is June 27, 1982, and my address is 16990 Collins Ave Suite: 1104, Sunny Isles Beach, FL 33160. I am the Manager of Moncler Motors LLC.

I am over 21 years of age and legally able to provide a sworn verification. I have reviewed the above Petition and declare under penalty of perjury and pursuant to Texas Civil Practice and Remedies Code Section 132.001 that the facts presented above, as they relate to Moncler Motors LLC, are true and correct to the best of my knowledge and belief.

DATE: 3/9/2021



DECLARANT

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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Associated Case Party: CCUR Holdings, Inc

Name	BarNumber	Email	TimestampSubmitted	Status
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Associated Case Party: Moncler Motors LLC

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